

SEP 15 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

UWEM USANGA,

Defendant - Appellant.

No. 05-50107

D.C. No. CR-04-00273-LGB-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding

Submitted September 11, 2006^{**}

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Uwem Usanga appeals from his 18-month sentence imposed by the district court following his guilty-plea conviction for health care fraud in violation of 18 U.S.C. § 1347, and false statements relating to health care matters in violation of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

18 U.S.C. § 1035. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Usanga contends that the district court erred in applying sentencing enhancements for a loss amount of more than \$500,000 and more than minimal planning, absent a jury determination of the facts necessary to apply the enhancements beyond a reasonable doubt, or an admission of those facts by Usanga. This contention is foreclosed by *United States v. Staten*, No. 05-30055, 2006 WL 2506386, *7-11 (9th Cir. August 31, 2006).

Usanga further contends that because the record is unclear as to whether the district court granted a downward departure as a result of his lost opportunity to serve his sentence concurrently, a remand is necessary to determine whether the sentence is reasonable. We disagree. Upon review, we conclude that the record reflects that the court calculated the applicable Guidelines range, considered the factors specified in 18 U.S.C. § 3553(a), and imposed a sentence below the Guidelines range. We conclude that the sentence was not unreasonable. *See United States v. Mix*, 457 F.3d 906, 912-14 (9th Cir. 2006).

AFFIRMED.